

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

JONEY JOE LUSTY,)	
)	
Petitioner,)	
)	
v.)	Case No. CIV-06-1055-T
)	
STATE OF OKLAHOMA,)	
)	
Respondent.)	

ORDER

This matter is before the Court for review of the Report and Recommendation issued by United States Magistrate Judge Gary M. Purcell pursuant to 28 U.S.C. § 636(b)(1)(B) and (C). Giving Petitioner, a *pro se* prisoner, the benefit of the prison mailbox rule,¹ the Court accepts as timely his Objection to Magistrate's Report and Recommendation, which was filed November 13, 2006, but contains a certificate of mailing dated November 3, 2006.

Judge Purcell first recommends denial of Petitioner's motion to proceed *in forma pauperis* because he "has sufficient financial resources to pay the \$5.00 filing fee." (Report at 1.) With Petitioner's Objection, he has tendered payment in this amount for his filing fee. Therefore, the Court adopts Judge Purcell's recommendation to deny *in forma pauperis* status.

Judge Purcell also recommends dismissal for lack of jurisdiction of Petitioner's "Application for Extraordinary Writ of Appeal from Adverse Ruling of the Oklahoma Appellate Court of

¹ See *Price v. Philpot*, 420 F.3d 1158, 1164 (10th Cir. 2005).

Criminal Appeals.” Liberally construing this *pro se* pleading, and noting Petitioner has previously sought habeas relief from his state court conviction, Judge Purcell treats the Application as a petition for a writ of mandamus directed to state officials. So construed, Judge Purcell finds such relief is unavailable from federal courts. (Report at 1-2 & n.1.) Judge Purcell is absolutely correct on this point. *See Olson v. Hart*, 965 F.2d 940, 942 (10th Cir. 1992) (“Federal courts have no authority to issue a writ of mandamus to a state judge.”)

Petitioner objects to Judge Purcell’s construction of his pleading. Petitioner asserts that he intends precisely what the Application says – to appeal an adverse ruling by the Oklahoma Court of Criminal Appeals in order to overturn an unconstitutional decision by the state’s highest court with regard to a criminal matter. The Court accepts Petitioner’s characterization of his pleading but nevertheless finds the recommended disposition to be correct. The law is clear that this Court lacks jurisdiction to reverse a state court ruling:

A federal district court does not have the authority to review final judgments of a state court in judicial proceedings; such review may be had only in the United States Supreme Court. 28 U.S.C. § 1257 (1982). *See District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482, 103 S. Ct. 1303, 1314-15, 75 L. Ed. 2d 206 (1983). Federal district courts do not have jurisdiction “over challenges to state-court decisions in particular cases arising out of judicial proceedings even if those challenges allege that the state court’s action was unconstitutional.” *Feldman*, 460 U.S. at 486, 103 S. Ct. at 1317.

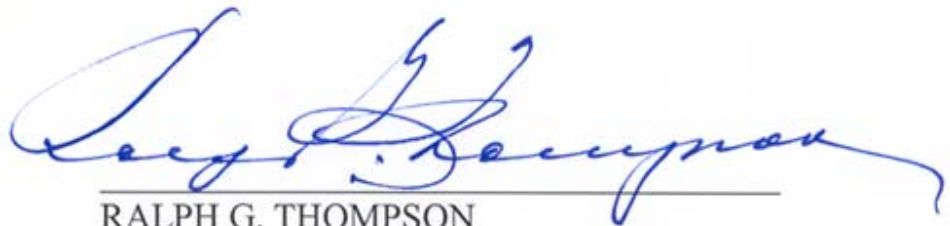
Van Sickle v. Holloway, 791 F.2d 1431, 1436 (10th Cir. 1986). Therefore, the Court adopts Judge Purcell’s recommendation of dismissal for lack of jurisdiction.

For these reasons, the Court adopts the Report and Recommendation [Doc. 6] as modified by this Order. Petitioner’s Motion for Leave to Proceed *In Forma Pauperis* [Doc. 5] is DENIED. The “Application for Extraordinary Writ of Appeal from Adverse Ruling of the Oklahoma Appellate

Court of Criminal Appeals” [Doc. 1] is DISMISSED for lack of subject matter jurisdiction.

Judgment will be entered accordingly.

IT IS SO ORDERED this 16th day of November, 2006.



RALPH G. THOMPSON
UNITED STATES DISTRICT JUDGE